

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROC NATION, LLC,

Plaintiff,

v.

FACILITIES CONCESSION SERVICES INC. d/b/a
SPECTRUM CATERING, CONCESSIONS AND
EVENTS,

Defendant.

No.

COMPLAINT

Plaintiff Roc Nation, LLC (“Roc Nation” or “Plaintiff”), by and through its attorneys Reed Smith LLP, in support of its Complaint against Facilities Concession Services Inc. d/b/a Spectrum Catering, Concessions and Events (“Spectrum” or “Defendant”) alleges and states as follows:

NATURE OF THE CASE

1. This action arises from Spectrum’s repeated breach of a concession agreement with Roc Nation, whereby Roc Nation contracted with Spectrum to provide food vendor management and beverage concession services in connection with the Made in America Festival (“MIA Festival”), an annual two (2) day music festival held in Philadelphia, Pennsylvania.

2. Roc Nation granted Spectrum the right to provide its services during the 2017 MIA Festival, held on September 2-3, 2017, and the 2018 MIA Festival, held on September 1-2, 2018, in exchange for Spectrum paying commissions to Roc Nation from the substantial food and beverage revenue generated for Spectrum during the festival.

3. In connection with the 2017 MIA Festival, Spectrum made numerous unauthorized deductions of expenses, credit card fees and taxes from Roc Nation's commissions. These costs were the sole responsibility of Spectrum and, thus, the outstanding amount owed to Roc Nation for the 2017 MIA Festival totals \$122,248.74 plus interest, costs and fees.

4. Similarly, in connection with the 2018 MIA Festival, Spectrum refused to pay Roc Nation the commissions owed to Roc Nation under the concession agreement after Roc Nation notified Spectrum of its unauthorized deductions of certain expenses, credit card fees and taxes from Roc Nation's commissions. Spectrum also refused to provide Roc Nation with any receipts or documentation of expenses that were deducted from Roc Nation's commissions. The outstanding commissions owed to Roc Nation for the 2018 MIA Festival total \$145,595.35 plus interest, costs and fees.

5. In connection with a separate contract between United Way of Berks County ("United Way") and Roc Nation, United Way provided a special occasion permit, which allowed liquor to be sold during the MIA Festival, and in return, Roc Nation was required to make a substantial payment to United Way. It was this special occasion permit that allowed Spectrum to sell liquor during the festival, and, in exchange for this benefit, Spectrum agreed to pay \$100,000 of the required payment to United Way. Spectrum refused to make this \$100,000 payment for the 2018 MIA Festival. As a result, Roc Nation is obligated to make the full payment, and Spectrum is liable to Roc Nation for its \$100,000 share.

6. As a result of Spectrum's misconduct and breaches, Spectrum is liable to Roc Nation for breach of contract, breach of the implied covenant of good faith and unjust enrichment in an amount not less than \$367,844.09 plus applicable interest, costs and fees.

THE PARTIES

7. Roc Nation, LLC is a Delaware limited liability company with its principal place of business at 1411 Broadway, 39th Floor, New York, New York.

8. Facilities Concession Services Inc. d/b/a Spectrum Catering, Concessions and Events is a Texas corporation having a principal place of business at 27433 Robinson Road, Conroe, Texas 77385.

JURISDICTION AND VENUE

9. This Court has subject matter over this matter under 28 U.S.C. § 1332(a)(2) because it is a civil action in which the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and because there is diversity of citizenship between Plaintiff and Defendant. Roc Nation is a Delaware limited liability company with its principal place of business in New York, New York. Roc Nation has two members: (a) Live Nation Worldwide, Inc.; and (b) Marcy Media, LLC. Live Nation Worldwide, Inc., is a Delaware corporation with its principal place of business in Beverly Hills, California. Marcy Media, LLC, is a Delaware limited liability company with its principal place of business in New York, New York. The members of Marcy Media, LLC, are citizens of the States of New York, New Jersey, California, and Delaware only. Spectrum is a Texas corporation with its principal place of business in Conroe, Texas.

10. This Court has personal jurisdiction over Spectrum under 42 Pa.C.S.A. § 5322 because Spectrum utilized and contracted to utilize goods, facilities and/or services in the Commonwealth of Pennsylvania, County of Philadelphia, and otherwise purposefully availed itself of the privileges of conducting business activities in this Commonwealth.

11. Venue is proper in this judicial district pursuant to under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this district.

FACTUAL BACKGROUND

A. The Parties' Agreement

12. From 2014-2018, Spectrum provided food vendor management and beverage concession services during the annual MIA Festival pursuant to each applicable concession agreement. In consideration of Roc Nation's grant to Spectrum of the right to provide its services during the MIA Festival, Spectrum agreed to pay commissions to Roc Nation from the substantial food and beverage revenue generated for Spectrum during the festival.

13. The concession agreements defined the scope and nature of Spectrum's obligations including, but not limited to:

- (a) the services that Spectrum was to provide during the festival;
- (b) the responsibilities Spectrum had regarding deliverables, personnel, accounting and compliance with laws; and
- (c) the calculation of commissions owed to Roc Nation.

14. Pursuant to the parties' last executed concession agreement dated August 2017 and supporting addendum (together, the "Concession Agreement"), Spectrum agreed to pay commissions to Roc Nation as follows:

- (a) sixty (60) percent of gross receipts¹ derived from all alcoholic beverage sales pursuant to the addendum²;
- (b) forty-two (42) percent of gross receipts derived from all non-alcoholic beverages sales; and

¹ Gross receipts is defined as "all sales receipts from Services at the Festival, less only applicable retail sales taxes and alcoholic beverage taxes to the extent such taxes are collected from the consumer at the time of sale." Ex. A, ¶ 5.B.

² The addendum required Spectrum to remit an additional ten (10) percent of gross-net alcoholic beverage sales back to Roc Nation, which increased the commission percentage for alcoholic beverage sales from fifty (50) percent to sixty (60) percent. See Ex. A, Addendum.

(c) one hundred (100) percent of Spectrum's gross revenue from food trucks.

A true and correct copy of the Concession Agreement is annexed hereto as **Exhibit A**. The Concession Agreement also listed numerous costs and expenses that were the sole responsibility of Spectrum, as discussed further below.

15. United Way obtained a special occasion permit, which allowed liquor to be sold during the MIA Festival. Based on this arrangement, Roc Nation was required to make a substantial payment to United Way. This arrangement with United Way was acknowledged by the parties in Section 3 of the Concession Agreement. The special occasion permit allowed Spectrum to sell liquor during the festival. In return, Spectrum agreed to pay \$100,000 of the required payment to United Way.

16. Instead of executing a new concession agreement for the 2018 MIA Festival, Roc Nation and Spectrum performed their respective obligations pursuant to the terms of the Concession Agreement. Further, the parties relied on the terms of the Concession Agreement to resolve issues between them after the 2018 MIA Festival. For example, on September 7, 2018—a few days after the conclusion of the 2018 MIA Festival, Lisa Bashi ("Mrs. Bashi"), the Vice President of Finance at Roc Nation, emailed Spectrum regarding the correct amount due to Roc Nation from sales of non-alcoholic beverages. In response, Maverick Smalley ("Mr. Smalley"), the Vice President of Music at Spectrum, stated: "The +10% only applies to alcohol sales. While no contract was ever done for 2018, you can see the addendum attached here from 2017." A true and correct copy of the email correspondence between Mrs. Bashi and Mr. Smalley dated September 7, 2018 is annexed hereto as **Exhibit B**.

17. Spectrum's computation of Roc Nation's commissions for the 2018 MIA Festival are based on the terms of the Concession Agreement. According to Spectrum's Beverage Recap

and Food and Beverage Settlement Statements (“Beverage Recap and Settlement Statement(s)”) from 2017 and 2018, the percentages used to calculate commissions due to Roc Nation from the beverage and food sales are the same for the 2017 and 2018 MIA Festivals. True and correct copies of Spectrum’s 2017 and 2018 Beverage Recap and Settlement Statements are annexed hereto as **Exhibit C**.

18. The Concession Agreement was thus the operative agreement guiding the business relationship between Roc Nation and Spectrum for both the 2017 and the 2018 MIA Festivals.

B. All of the Expenses Listed in Spectrum’s Invoice are Unauthorized Expenses

19. Following the 2018 MIA Festival, Spectrum issued Invoice No. 590318 dated September 12, 2018 (incorrectly dated September 12, 2016) (“2018 Spectrum Invoice”) to Roc Nation in the amount of \$95,708.32 for food vendor expenses, staffing wages and fees, vehicles, products and equipment. A true and correct copy of the 2018 Spectrum Invoice is annexed hereto as **Exhibit D**.

20. On September 17, 2018, Greg Resh (“Mr. Resh”), the Chief Financial Officer of Roc Nation, emailed Spectrum to inquire about the expenses in the 2018 Spectrum Invoice. Mr. Maverick provided the following explanations:

- a) the food vendor charges were operational items required to be in compliance with the health and fire department;
- b) the non-alcoholic beverage calculation included an additional sugar tax that Philadelphia imposes on non-alcoholic beverages;
- c) the product charges were based on an agreement between the parties that Roc Nation would cover the costs for twenty (20) cases of D’usse and for the Live Nation After-Party; and

- d) the specialty area charges were based on requests from an entity called Diversified Products and Services (“DPS”).

A true and correct copy of the email correspondence between Mr. Resh and Mr. Smalley dated September 17, 2018 is annexed hereto as **Exhibit E**.

21. Mr. Resh requested that Spectrum provide supporting documentation for all expenses related to the specialty area. Mr. Smalley refused to provide this information and instead told Roc Nation to follow up with DPS. *See id.*

22. The expenses itemized in the 2018 Spectrum Invoice are expenses that required Roc Nation’s advanced authorization. Any expenses not expressly permitted in the Concession Agreement required the submission of supporting documentation to Roc Nation. Spectrum did not follow these protocols and deducted \$95,708.32 in unauthorized expenses.

i. *Spectrum was not authorized to deduct operational expenses*

23. Pursuant to the Concession Agreement, Spectrum was not authorized to deduct operational expenses such as food vendor expenses, staffing wages and fees, vehicles, products and equipment from Roc Nation’s commissions, yet Spectrum made these deductions.

24. More specifically, under Sections 2(b), 3 and 8 of the Concession Agreement, all operational expenses for compliance with any rules imposed by the City of Philadelphia was the responsibility of Spectrum, and Spectrum was not authorized to deduct these expenses from Roc Nation’s commissions.

25. Under Section 2(b), Spectrum was obligated to provide, at its sole cost and expense, any and all ***equipment***, uniforms, ***tents***, signs, waste bins, ***products***, ***ice***, biodegradable cups, napkins, utensils, tableware, linens, U.S. currency (paper and coin), mechanisms for accepting cash and credit card payments at all designated points of sale, ***together with storage and security for all such items***, and to provide portable offices, logistics, permits, licenses, insurance, communications devices,

vehicles, and any other items necessary to perform the Services,
and to recruit, train and manage all staff and other personnel

Ex. A, ¶ 2(b) (emphasis added).

26. Pursuant to Section 3 of the Operative Concession Agreement, it was Spectrum’s “*sole responsibility to obtain* all applicable *permits, licenses* and/or *approvals* in order to sell and serve alcoholic beverages as part of the Services...” **Ex. A**, ¶ 3 (emphasis added).

27. Pursuant to Section 8, Spectrum was *responsible for employing and supervising* “such *personnel* as shall be necessary for efficient performance of its obligations under this Agreement, and not less than one bartender per 100 patrons throughout the duration of the Festival.” **Ex. A**, ¶ 8 (emphasis added).

28. The operational expenses listed in the 2018 Spectrum Invoice are expressly prohibited to be charged back by Spectrum pursuant to the Concession Agreement. For example, the food vendor expenses had the following charges:

- a. Metal tents required by the Philadelphia Fire Department: \$6,000
- b. Sum Pig POS (VIP): \$50
- c. Sum Pig Guarantee (VIP): \$9,319.00
- d. Three Compartment Sinks Tent: \$150.00
- e. Three Compartment Sinks: \$ 500.00

Tents and equipment are specifically listed as expenses that are Spectrum’s sole responsibility under Section 2(b). Moreover, Roc Nation did not agree to cover a food vendor guarantee, and Spectrum has not provided Roc Nation with any documentation to prove otherwise. The total amount of unauthorized food vendor expenses is \$16,019.00. *See Ex. D.*

29. The 2018 Spectrum Invoice included \$24,884.96 in D’usee staff wages and expenses. Despite Roc Nation’s request for Spectrum to provide documentation to back up these

staff wages and expenses, Spectrum has not provided any supporting documentation. Roc Nation never approved these expenses. Accordingly, the D'usse staff wages and expenses are an unauthorized expense.

30. There is no provision in the Concession Agreement that holds Roc Nation responsible for expenses incurred by any other entity connected to the festival.

31. As a result of these erroneous expenses, Spectrum deducted \$16,019.00 in food vendor expenses and \$24,884.96 in D'usse staff wages from Roc Nation's commissions. *See Ex. C and Ex. D.*

ii. *Spectrum was not authorized to deduct product expenses or special area expenses*

32. Roc Nation did not agree to cover product expenses related to alcoholic beverages, nor did it request these products from Spectrum or any other party connected to the festival.

33. More specifically, Roc Nation did not agree to cover the cost of twenty (20) cases of D'usse and the cost of the Live Nation After-Party.

34. As a result of these erroneous expenses, Spectrum deducted \$10,234.08 in product expenses and \$40,357.88 in specialty area expenses from the total commissions payable to Roc Nation. *See Ex. C and Ex. D.*

35. The unauthorized expenses contained in the 2018 Spectrum Invoice total \$95,708.32. *See Ex. D.*

C. *Spectrum Was Not Authorized to Deduct a Sugar Tax*

36. Spectrum's deduction of a sugar tax also was not contemplated by the Concession Agreement and should not have been deducted from the gross receipts.

37. Pursuant to Section 5.B, Spectrum was only permitted to deduct “applicable retail sales tax and alcoholic beverage taxes to the extent such taxes are collected from the consumer at the time of sale” from the gross receipts. **Ex. A, ¶ 5.B.**

38. Spectrum wrongly deducted a sugar tax not contemplated by the Concession Agreement totaling \$1,862.91. *See Ex. C, 2018 Beverage Recap and Settlement Statement.*

D. Spectrum’s Deduction of Credit Card Transaction Fees from Roc Nation’s Commissions Violates the Concession Agreement

39. Spectrum wrongly deducted credit card transaction fees from the total amount of beverage revenue in the 2018 Beverage Recap and Settlement Statement, and then paid commissions based on this artificially depressed number.

40. Section 4 of the Concession Agreement states that Spectrum, at its sole cost and expense, will have the means of accepting all payments in connection with patron transactions. Section 4 also states that Roc Nation will pay Spectrum a “0.625% processing fee on all gross beverage RFID [radio-frequency identification] transactions and a 1.25% processing fee on all other gross RFID transactions,” and that Roc Nation will not incur any other fees directly or indirectly from Spectrum’s chosen POS [point of sale] software provider. **Ex. A, ¶ 4.**

41. Spectrum deducted a 3.5% credit card merchant fee from the total commissionable net sales in the amount of \$23,271.26, and deducted a POS fee for \$11,635.63 from the total commissions. Spectrum compounded its error by computing the commissions due to Roc Nation based on alcohol and non-alcohol sales on a net basis – that is, net of credit card fees – rather than on a gross basis, which resulted in a variance of \$13,117.23. These multiple errors total \$48,024.12.

42. Spectrum is aware that the POS fee should not be deducted from Roc Nation’s commissions. Roc Nation previously disputed Spectrum’s deduction of a POS fee from Roc

Nation's commissions in connection with the 2017 MIA Festival. Spectrum corrected this deduction and included the POS fee amount in the total commissions wired to Roc Nation for the 2017 MIA Festival. True and correct copies of the November 3, 2017 email correspondence between Roc Nation and Spectrum and related JP Morgan Chase Bank Wire Transfer Receipt dated November 6, 2017 are annexed hereto as **Exhibit F**.

43. To date, Spectrum has not acknowledged or remedied its breach of the Concession Agreement. Furthermore, Spectrum continues to owe Roc Nation for all outstanding commission amounts in connection with the 2018 MIA Festival totaling \$145,595.35 plus interest, costs and fees.

E. Spectrum Refused to Make a Required Payment in Violation of the Parties' Agreement

44. As acknowledged by the parties in Section 3 of the Concession Agreement, United Way obtained a special occasion permit, which allowed liquor to be sold during festival. The special occasion permit allowed Spectrum to sell liquor during the MIA Festival in compliance with the applicable state laws.

45. In connection with the 2017 MIA Festival and the Concession Agreement, on September 2, 2017, Spectrum agreed to make a \$100,000 payment for its share of the payment to United Way, and Spectrum fulfilled this payment requirement as agreed. A true and correct copy of the September 2-3, 2017 email correspondence between Roc Nation and Spectrum is annexed hereto as **Exhibit G**.

46. Roc Nation fully expected that Spectrum would fulfill this obligation for the 2018 MIA Festival. However, Spectrum's payment was noticeably missing at the end of the festival. On September 17, 2018, Roc Nation notified Spectrum that it was missing Spectrum's required \$100,000 payment. Mr. Smalley claimed that in the past this payment requirement was based on

Spectrum receiving donated beer from a festival sponsor. Mr. Smalley further stated that he would not provide the required payment for the 2018 MIA Festival because no donated beer was provided to Spectrum. *See Ex. E.*

47. Spectrum's payment obligation was never contingent on the amount of beer donated to Spectrum. Spectrum's refusal to provide the \$100,000 payment for its share of the payment obligation to United Way is a breach of the parties' agreement. As a result, Roc Nation is obligated to make the full payment, and Spectrum is liable to Roc Nation for its \$100,000 share.

F. Spectrum Also Deducted Unauthorized Expenses from the 2017 MIA Festival

48. In Spectrum's Invoice No. 093271 dated September 7, 2017 for the 2017 MIA Festival ("2017 Spectrum Invoice"), Spectrum deducted unauthorized expenses totaling \$74,723.45. A true and correct copy of the 2017 Spectrum Invoice is annexed hereto as **Exhibit H**.

49. Additionally, Spectrum deducted a sugar tax for Red Bull and soda in the amount of \$1,618.96 from Roc Nation's commissions. *See Ex. C, 2017 Beverage Recap and Settlement Statement.*

50. While Spectrum refunded Roc Nation for the POS fee in connection with the 2017 MIA Festival, Spectrum deducted a 3.5% credit card merchant fee from the total commissionable net sales in the amount of \$29,072.89. Spectrum compounded its error by computing the commissions due to Roc Nation based on alcohol and non-alcohol sales on a net basis rather than on a gross basis, which resulted in a variance of \$16,833.44. These multiple errors total \$45,906.33.

51. To date, Spectrum has not acknowledged or remedied its breach of the Concession Agreement for the 2017 MIA Festival. Furthermore, Spectrum continues to owe Roc Nation for

all outstanding commissions in connection with the 2017 MIA Festival totaling \$122,248.74 plus interest, costs and fees.

52. Spectrum's errors in computing Roc Nation's commissions from the 2017 MIA Festival total \$122,248.74 and its errors in computing Roc Nation's commissions from the 2018 MIA Festival total \$145,595.35. Spectrum also owes Roc Nation \$100,000 for its share of the required payment to United Way. The combined total that Spectrum owes to Roc Nation for these outstanding amounts is \$367,844.09, plus interest, costs and fees.

**AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

53. Roc Nation repeats and realleges each and every allegation contained in paragraphs 1 through 52, above, as if fully set forth herein.

54. Roc Nation and Spectrum entered into the Concession Agreement, a valid and binding contract, under which Spectrum was to provide food vendor management and beverage concession services during the 2017 and 2018 MIA Festivals.

55. In consideration of Roc Nation granting Spectrum the right to provide its services during the 2017 and 2018 MIA Festivals, Spectrum agreed to pay commissions to Roc Nation.

56. The Concession Agreement specified how Spectrum should calculate commissions owed to Roc Nation including defining all expenses, fees and taxes that were appropriate to deduct from commissions and those which were Spectrum's responsibility. Spectrum agreed to the terms of the Concession Agreement.

57. Spectrum failed to pay the correct commissions owed to Roc Nation for the 2017 and 2018 MIA Festival because it wrongly deducted unauthorized expenses, taxes and credit card transaction fees from Roc Nation's commissions. Roc Nation performed all of its obligations under the Concession Agreement, and did not excuse Spectrum's performance thereunder.

58. Based upon the foregoing, Spectrum breached the Concession Agreement by, *inter alia*, failing to timely pay Roc Nation the commission amounts owed under the Concession Agreement in violation of Section 7.D and deducting unauthorized expenses from Roc Nation's commissions in violation of Sections 2(b), 3, 4, 5.B and 8 of the Concession Agreement.

59. In connection with the 2018 MIA Festival, Spectrum refused to pay its share of the \$100,000 required payment to United Way, as agreed to by the parties.

60. As the direct and proximate result of the foregoing, Spectrum is liable to Roc Nation in an amount to be determined at trial, but no less than \$367,844.09 plus interest, costs and fees. *See Ex. A, ¶¶ 7.A, 11.*

**AS AND FOR A SECOND CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)**

61. Roc Nation repeats and realleges each and every allegation contained in paragraphs 1 through 60, above, as if fully set forth herein.

62. In addition to Spectrum's breach of express provisions of the Concession Agreement, it has also breached the covenant of good faith and fair dealing, which is implied in the Concession Agreement.

63. In particular, in an attempt to avoid paying Roc Nation for the outstanding commissions owed, Spectrum is denying that it had an obligation to pay Roc Nation for the full amount that it owes to Roc Nation under the Concession Agreement and claiming that the terms contained therein are ambiguous.

64. Despite benefiting from the special occasion permit provided by United Way, which allowed liquor to be sold during the festival, Spectrum is denying that it had an obligation to make a \$100,000 payment for its share of the required payment to United Way, as agreed to by the parties. As a result, Roc Nation is obligated to make the full payment to United Way.

65. Spectrum's bad faith conduct frustrated the purpose of the Concession Agreement and deprived Roc Nation of the benefit of the bargain as reflected in the Concession Agreement.

66. Based upon the foregoing, Spectrum breached the implied covenant of good faith and fair dealing, and is liable to Roc Nation in an amount to be determined at trial, but no less than \$367,844.09 plus interest, costs and fees. **Ex. A, ¶¶ 7.A, 11.**

**AS AND FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)**

67. Roc Nation repeats and realleges each and every allegation contained in paragraphs 1 through 66, above, as if fully set forth herein.

68. Pursuant to the Concession Agreement, Spectrum was obligated to pay Roc Nation commissions from the substantial revenue Spectrum generated from the food and beverage sales during the MIA Festival in exchange for Roc Nation granting Spectrum the exclusive right to provide food vendor management and beverage concession services.

69. Despite receiving the benefits of the Concession Agreement, Spectrum refused to pay all the outstanding commissions required to be paid to Roc Nation as reflected in the Concession Agreement.

70. Despite receiving the benefit of United Way's special occasion permit, Spectrum refused to make a \$100,000 payment for its share of the required payment to United Way, as agreed to by the parties.

71. Based upon the foregoing, benefits have been conferred upon Spectrum that have caused it to be unjustly enriched at Roc Nation's expense, and it is liable to Roc Nation in an amount to be determined at trial, but no less than \$367,844.09 plus interest, costs and fees. *See Ex. A, ¶¶ 7.A, 11.*

PRAYER FOR RELIEF

WHEREFORE, Roc Nation demands the following relief:

- A. On all causes of action, damages in an amount to be determined at trial, but not less than, \$367,844.09 plus interest, costs and fees;
- B. All costs, fees and disbursements, including attorneys' fees, permitted by law; and
- C. Such other, further and different relief as the Court may deem just and proper.

Dated: November 29, 2018

REED SMITH LLP

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